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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE ELLIOT KRAMER and JOY ELIZABETH BELIN

Appeal 2008-6016
Application 10/787,142
Technology Center 1700

Decided:¹ February 25, 2009

Before CHARLES F. WARREN, TERRY J. OWENS, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 24, 26, 28-51 and 53-58, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

The Invention

The Appellants claim a method for improving a child's hygiene by motivating the child to wash or bathe with a cleansing bar having a particular arrangement of colored layers. Claim 24 is illustrative:

24. A method for improving a child's hygiene, comprising
(1) motivating a child to wash or bathe by providing the child with a multicolored cleansing bar comprising a cleansing material and having a plurality of colors designed to motivate the child to wash or bathe with the cleansing bar in order to see the appearance of the cleansing bar change, and
(2) having the child wash or bathe with the cleansing bar, wherein the child is motivated to wash or bathe with the cleansing bar in order to see the appearance of the cleansing bar change,

wherein the cleansing bar comprises an outside layer and at least one inside layer, wherein the outside layer is a different color from at least one inside layer,

wherein the child sees the appearance of the cleansing bar change by washing or bathing with the cleansing bar so that the outside layer disappears due to the washing or bathing.

The Reference

Sonnenberg

6,673,756 B2

Jan. 6, 2004

The Rejections

Claims 24, 26, 28-51, and 53-58 stand rejected under 35 U.S.C. § 103 over Sonnenberg.

OPINION

We affirm the Examiner's rejection.

The Appellants argue the claims in the following groups: 1) claims 24, 26 and 30-42, 2) claims 28 and 43-49, 3) claim 29, 4) claims 50, 51 and 53-57, and 5) claim 58 (Br. 7-10; Reply Br. 2). We therefore limit our

discussion to one claim in each group, i.e., claims 24, 28, 29, 50, and 58.

See 37 C.F.R. § 41.37(c)(1)(vii) (2008).

Issue

Have the Appellants shown reversible error in the Examiner's determination that Sonnenberg would have rendered prima facie obvious, to one of ordinary skill in the art, a method comprising motivating a child to wash or bathe by having the child wash or bathe with a cleansing bar wherein:

- 1) the cleansing bar comprises an outside layer and at least one inside layer, wherein the outside layer is a different color from the at least one inside layer, and the child sees the appearance of the cleansing bar change by washing or bathing with the cleansing bar so that the outside layer disappears due to the washing or bathing (claim 24), and the layers are opaque (claim 29),
- 2) the cleansing bar comprises a top layer and at least one other layer, wherein the top layer is a different color from at least one other layer, and the child sees the appearance of the cleansing bar change by washing or bathing with the cleansing bar so that the top layer disappears due to the washing or bathing (claim 28),
- 3) the cleansing bar has a top, bottom, two sides, front and back, and comprises a first layer which is at all of the top, bottom, and both sides of the bar but not at all of the front and back of the bar, and at least one other layer, wherein the first layer is a different color from at least one other layer, and the child sees the appearance of the cleansing bar change by washing or bathing with the cleansing bar so that the first layer disappears due to the washing or bathing (claim 50), or
- 4) the cleansing bar comprises at least a red layer, an orange layer, a yellow layer, a green layer, a blue layer, and a purple layer, and contains a prize identifier having the appearance of a pot of gold (claim 58).

Findings of Fact

Sonnenberg discloses “multiphase soaps in which the individual phases are highly visible when viewed from above and from the side” (col. 1, ll. 8-10) to provide “different scent experiences during the washing operation” (col. 1, ll. 11-12). Preferably, “each phase [of the soap] is visible in the vertical, longitudinal and transverse projection to at least 15%, based on the overall projected area” (col. 3, ll. 23-25). The soaps can be colored and can be opaque (col. 26, ll. 31-35). “It is also possible to incorporate three-dimensional objects into the multiphase soaps” (col. 21, ll. 50-51) that have any shape (col. 21, ll. 51-55) and “can serve for advertising purposes, as toys, e.g. in the form of figures, to unambiguously identify a brand, as collectable objects or as identifying object[s] in cases of prize competitions” (col. 21, ll. 56-59). The three-dimensional objects can be made of a metal which can be gold (col. 22, ll. 7-10, 14-16). Many different multiphase configurations are shown in Sonnenberg’s Figures 1A and B to 10A and B, and 12A and B.

Analysis

The Appellants argue regarding claim 24 that Sonnenberg does not disclose an inside layer that is not visible from the outside, i.e., when the cleansing bar is viewed from the top or side (Br. 7).

That argument is not persuasive because a layer between two layers reasonably can be considered an inside layer even if it is visible from the sides.

The Appellants argue that “the cited art would not inherently motivate a child to wash in order to see the appearance of the cleansing bar change in the particular way recited in the present claims (e.g., the outside layer

disappearing in claim 24, the top layer disappearing in claim 28, the first layer disappearing in claim 50, or the pattern including rainbow colors changing in claim 58)” (Br. 11).

The Appellants’ claims do not require that the cleansing bar itself motivates a child to wash or bathe. The claims merely require motivating a child to wash or bathe by having the child wash or bathe with the cleansing bar. Hence, the claims encompass motivation that can come from parental instruction to wash or bathe with the cleansing bar as well as from recognition by the child that he/she needs washing or bathing.

Moreover, we find in the record no evidence that the arrangements of cleansing bar layers and colors recited in the Appellants’ claims, but not other arrangements or colors, would motivate a child to wash or bathe with a cleansing bar.

As for the particular arrangement of colors and layers recited in the Appellants’ claims, the numerous arrangements disclosed in Sonnenberg’s figures indicate that selection of layer arrangements and colors including those recited in the Appellants’ claims would have required no more than ordinary creativity by one of ordinary skill in the art to provide a functional cleansing bar having the desired appearance. *See KSR Int’l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (In making an obviousness determination one “can take account of the inferences and creative steps that a person of ordinary skill in the art would employ”). Due to washing or bathing, the layers in each of those bars would disappear (first outer and then inner) and the appearance of the multicolored cleansing bar would change as the colors get mixed together and the layers disappear.

The Appellants argue that claim 29 requires an opaque layer (Reply Br. 2).

Sonnenberg discloses that the layers can be opaque (col. 26, ll. 31-33).

With respect to claim 58 the Appellants argue that Sonnenberg does not disclose that the prize identifier can have the appearance of a pot of gold (Br. 9).

Sonnenberg's disclosures that the prize can have any shape, can be metal and can be gold (col. 21, ll. 50-59; col. 22, ll. 7-9, 14-15) would have led one of ordinary skill in the art, through no more than ordinary creativity, to use a gold colored metal prize having the desired shape such as a pot of gold. *See KSR*, 127 S. Ct. at 1741.

Conclusion of Law

The Appellants have not shown reversible error in the Examiner's determination that Sonnenberg would have rendered prima facie obvious, to one of ordinary skill in the art, a method comprising motivating a child to wash or bathe by having the child wash or bathe with a cleansing bar wherein:

- 1) the cleansing bar comprises an outside layer and at least one inside layer, wherein the outside layer is a different color from the at least one inside layer, and the child sees the appearance of the cleansing bar change by washing or bathing with the cleansing bar so that the outside layer disappears due to the washing or bathing (claim 24), and the layers are opaque (claim 29),
- 2) the cleansing bar comprises a top layer and at least one other layer, wherein the top layer is a different color from at least one other layer, and the child sees the appearance of the cleansing bar change by washing or bathing with the cleansing bar so that the top layer disappears due to the washing or bathing (claim 28),

3) the cleansing bar has a top, bottom, two sides, front and back, and comprises a first layer which is at all of the top, bottom, and both sides of the bar but not at all of the front and back of the bar, and at least one other layer, wherein the first layer is a different color from at least one other layer, and the child sees the appearance of the cleansing bar change by washing or bathing with the cleansing bar so that the first layer disappears due to the washing or bathing (claim 50), or

4) the cleansing bar comprises at least a red layer, an orange layer, a yellow layer, a green layer, a blue layer, and a purple layer, and contains a prize identifier having the appearance of a pot of gold (claim 58).

DECISION/ORDER

It is ordered that the Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

PL Initial:
sld

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